

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BONNIE RAMSDELL,)	
)	
Plaintiff)	
)	
v.)	1:11-cv-00398-GZS
)	
HUHTAMAKI, INC., <i>et al.</i> ,)	
)	
Defendants)	

**ORDER RE: PLAINTIFF'S MOTION TO
MODIFY ADMINISTRATIVE RECORD
AND CONDUCT DISCOVERY**

Bonnie Ramsdell has sued Aetna Life Insurance Company because Aetna denied the payment of benefits under an ERISA short-term disability plan, which would have paid up to 39 weeks of benefits for a claimant unable to perform her own occupation. Ramsdell claims disabling depression, anxiety, and PTSD caused by sexual harassment at her workplace. Aetna concluded that, while Ramsdell may not have been able to return to her prior workplace because of psychological factors, she was not disabled from working in her own occupation within the policy's terms. The current dispute centers around Ramsdell's attempts to modify the administrative record by adding various documents she submitted after Aetna made its "final" administrative decision on July 21, 2010, and her attempts to conduct discovery into Aetna's claims practices. (Pl.'s Mot. to Modify Admin. R. and Conduct Discovery, Doc. No. 16.) I now deny both requests.

MOTION TO MODIFY THE ADMINISTRATIVE RECORD

The parties are in agreement that the final administrative decision typically "acts as a temporal cut off point for the administrative record" in an action for benefits under an ERISA governed plan. Orndorf v. Paul Revere Life Ins. Co., 404 F.3d 510, 519 (1st Cir. 2005); see also

Lopes v. Metro. Life Ins. Co., 332 F.3d 1, 5-6 (1st Cir. 2003); Liston v. Unum Corp. Officer Severance Plan, 330 F.3d 19, 23 (1st Cir. 2003). The dispute relates to whether the final administrative decision on July 21, 2010, was indeed the appropriate temporal cut-off or whether an April 25, 2011, letter from Aetna to plaintiff's after-acquired counsel denying her further request for reconsideration is the more appropriate temporal cut-off. Although Ramsdell primarily argues that the administrative record was not closed until (or was reopened when) Aetna issued its most recent "decision" regarding reconsideration, she also contends that alleged procedural irregularities in handling the administrative appeal process prevented a full and fair review and that, therefore, this Court should consider medical evidence outside of the administrative record filed by Aetna. (Pl.'s Mot. at 5-8; Pl.'s Reply Brief at 1-2, Doc. No. 20.)

A brief explanation of the administrative processing of Ramsdell's claim is in order. Ramsdell left her employment on February 18, 2010, stating that she was unable to work with the individuals who harassed her because of her then existing anxiety, depression, and PTSD. By February 25, 2010, Ramsdell initiated a claim for short-term disability under the Aetna policy. (Admin. R. at 117.) On April 2, 2010, Aetna initially denied her claim after reviewing the materials submitted. (Id. at 178.) Aetna informed Ramsdell of her right to obtain an administrative review of the denial. (Id.) After further reconsideration, Aetna again denied the claim on May 4, 2010. (Id. at 190.) On May 13, 2010, Ramsdell filed a notice of her wish to appeal the decision. (Id. at 197.) Additional materials were submitted and developed during the pendency of the appeal and on July 21, 2010, Aetna issued a letter to Ramsdell informing her that the original decision to deny benefits would be upheld and that she had the right to bring a

civil action under Section 502(a) of the Employment Retirement Income Security Act. (Id. at 250-251).¹ Throughout this appeal process Ramsdell represented herself.

On October 25, 2010, Ramsdell's present counsel wrote a letter to Aetna requesting certain materials and notifying Aetna that he would be filing "a request for administrative review" of the prior claims denials of May 14, 2010, and July 21, 2010. (Aff. of Charles W. March, Doc. No. 16-1.) Under cover letter of November 10, 2010, Aetna provided documents in its file. Aetna's cover letter said nothing one way or the other about further "administrative review." (March Aff. Ex. 2, Doc. No. 16-3.) On November 12, 2010, counsel submitted medical records and reports from Patricia Grenier, LCSW, from March 1, 2010, through November 3, 2010, as well as medical records from Ramsdell's primary care providers dated November 5, 2010. (March Aff. Ex. 3, Doc. No. 16-4.) On April 8, 2011, Ramsdell's counsel sent a letter to Aetna, enclosing additional medical records. (March Aff. Ex. 4, Doc. No. 16-5.) The additional medical records were for the period from December 2010 through March 2011. On April 25, 2011, Aetna responded to the additional materials by stating the following:

A review of the recently submitted information does not warrant a reconsideration of the appeal review. The documents dated March 1, 2010 and May 19, 2010 were included in the initial appeal review. All other documents provided were dated November 3, 2010 through March 14, 2011; which did not support impairment beginning February 18, 2010.

(March Aff. Ex. 5, Doc. 16-6.)

Ramsdell's counsel maintains that because Aetna received and reviewed the additional medical records and because Aetna never stated that the appeal letters and records were not being read in further review of the claim, the final administrative review occurred on April 25, 2011, and these medical records should be part of the administrative record. In effect, Ramsdell

¹ Both the April 2, 2010, initial denial and the May 4, 2010, denial after reconsideration informed Ramsdell of her right to further administrative review of the decision. The final decision on July 21, 2010, did not contain any reference to further administrative review.

argues that her situation is different than the “normal” situation because, in fact, Aetna did not close the administrative record until it had considered the medical records submitted with counsel’s April 8, 2011, letter. (Mot. to Modify Admin. R. at 5, Doc. No. 16.) Should that argument fail to carry the day, Ramsdell also argues that she did not get a “full and fair review” of her claim because of alleged procedural irregularities above and beyond Aetna’s failure to return the medical documentation and inform counsel that the record had closed.

A. Notice of File Closure

Ramsdell argues that the administrative record was not officially “closed” until April 25, 2011, when Aetna informed her that her latest medical records would not form the basis for a reconsideration of the final administrative decision entered in July. Ramsdell’s major point appears to be that the July 2010 appeal review letter did not use the word “final,” although the e-mail communication Aetna sent to her employer made it clear that the insurer considered the July benefits denial to be a final determination. (Admin. R. at 253.) Further, Ramsdell notes that when her counsel wrote to Aetna in October 2010, indicating he would be seeking further administrative review, Aetna did not respond to his inquiry by informing him that the administrative record was closed. Finally, when Ramsdell submitted additional medical records at the beginning of April 2011, Aetna looked at those records to determine if they warranted reconsideration of the earlier benefits denial and did not return them. According to Ramsdell, Aetna’s refusal to reconsider its earlier benefits determination constituted the final administrative review and, thus, the unsolicited records counsel submitted regarding post-July 2010 provider statements should be made part of the administrative record. Because final review already had transpired, Aetna argues that it was not required to and maintains that it did not, in fact, reopen the record to introduce the new materials. (Def.’s Opposition at 7-9, Doc. No. 19.)

I disagree. While Aetna’s “final” administrative determination might have been better drafted to include the word “final,” it is plain from a review of the record that Aetna complied with ERISA requirements regarding both the initial determination and the opportunity for administrative appeal and reviews of that determination. The fact that Aetna looked at counsel’s submissions should not be equated with a “reconsideration” of the denial of benefits. Adding the submitted records to the administrative record would do nothing to assist this Court’s review of the decision under appeal because it is apparent these records were not considered when making the benefits determination or when making a substantive determination about reconsideration of the initial determination. Aetna looked at them and determined they did not provide a basis for reconsideration of the initial decision and thus were not relevant documents. I have looked at the documents and have come to the same determination. They are now part of the record of this case, but they are not properly included in the administrative record.

B. Allegations of Prejudice Arising from Procedural Irregularity

In Orndorf, the First Circuit observed that the temporal cut off may become less rigid if the claimant shows “prejudicial procedural irregularity in the ERISA administrative review procedure.” 404 F.3d at 520. Here, Ramsdell alleges that three procedural irregularities hampered her opportunity for “full and fair review.” 29 U.S.C. § 1133(b).

1. Notice of right to request file

According to Ramsdell, she suffered procedural prejudice at the time of the July 21, 2010, letter because Aetna did not inform her of her right to receive a copy of her claim file. See 29 C.F.R. § 2560.503-1(j)(3). Aetna responds that Ramsdell’s right to request the information in the claims file was set forth in the plan documents (Admin. R. at 30) and that Aetna advised her of the right to ask for copies of documents relevant to her request free of charge in the initial

denial letters dated May 4, 2010, and April 2, 2010. Aetna has the better argument. Ramsdell was advised of her right to have a copy of the claim file after the initial denials and she subsequently received the entire claim file pursuant to her attorney's request following the final administrative denial. Ramsdell was not prejudiced in her ability to obtain a full and fair review of her claim because she was fully informed of her right to her file prior to the final administrative decision.

2. Timing of final denial in relation to receipt of medical review

Ramsdell argues that there is something unfair in the timing of Aetna's denial of July 21, 2010, because it issued only two days after Aetna received a medical review from Dr. Mendelssohn. Aetna responds that a claimant has no procedural right to review and rebut medical opinions generated on administrative appeal and that there was nothing improper in the manner by which Dr. Mendelssohn's medical review was disclosed. Again, Ramsdell was not prejudiced in her ability to obtain a full and fair review of her claim because she was fully informed of her right to her claims file prior to the final administrative decision and she subsequently obtained the file, including Dr. Mendelssohn's medical review, prior to the commencement of this litigation. As the Warming decision makes clear, Ramsdell did not have any right to review and rebut the Mendelssohn medical review, which merely supported the administrative decision reached during the initial appeal. Warming v. Hartford Life & Acc. Ins. Co., 663 F. Supp. 2d 10, 19-20 (D. Me. 2009) (finding no precedent for the notion that a plan has the obligation to afford a claimant an opportunity to rebut a peer review report on which the plan relied in issuing a decision on a final appeal).

Ramsdell points out that Dr. Mendelssohn's review contained the notation that additional information helpful in assessing impairment might be obtained by a formal mental status exam

with testing to assess psychological functioning. Ramsdell claims that she was denied full and fair review because she was unaware of this observation by the medical expert until after the final administrative decision. This argument is not persuasive. Ramsdell cites no authority, and I am not able to locate any, for the proposition that Aetna had an obligation to pursue such an examination or afford the claimant time to obtain one. The issue before the Court is whether the evidence Aetna did have before it was sufficient to support its benefit determination. The fact that it did not seek the suggested additional examination and testing is one factor that can be considered because that fact is part of the administrative record.

3. *Provision of guidelines*

Ramsdell additionally faults Aetna for its failure to furnish her with its guidelines on behavioral health or claim practices. Aetna responds that it has no obligation to furnish methods and procedures manuals not related to a claimant's particular diagnoses because such manuals are beyond the scope of 29 C.F.R. § 2560.503-1(h)(2)(iii) (calling for provision on request of "all documents, records, and other information relevant to the claimant's claim for benefits") and (m)(8)(iv) (defining "relevant" documents to include "a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination"). Aetna apparently concedes that Ramsdell is entitled to have any documents regarding Aetna's statement of policy or guidance applicable to claims involving plaintiff's diagnoses pursuant to 29 C.F.R. § 2560.503-1(m)(8)(iv).² As for documents concerning other

² I am unclear from the parties' submissions if such documents exist in the record because neither party has provided a record citation to such documents and I am not going to attempt to ferret out those documents. If they exist, Aetna has an obligation to include them in the record, and if it has not done so, the record should be modified to include those documents.

mental health procedures or manuals, Ramsdell has not shown any procedural irregularity in the failure to provide those documents.

MOTION TO CONDUCT DISCOVERY

Ramsdell's discovery requests are, according to her, narrowly targeted requests related to Aetna's "conflicts" and are designed to provide evidence of Aetna's bias and procedural irregularities in the processing of her claim. (Pl.'s Mot. at 8-10; Pl.'s Reply Brief at 3.)

Ramsdell specifically asks for the following:

- (1) fair practices appeals guidelines;
- (2) behavioral health guidelines for the plaintiff's diagnoses;
- (3) guidelines for resolving disputed opinions between treatment providers and retained medical consultants; and
- (4) data to determine whether "peer review" consultant Mendelssohn was in fact truly independent.

To the extent the discovery requests are requests for the production of documents in Aetna's possession that pertain to its process for claims handling relating to Ramsdell's particular diagnoses, I understand that Aetna either has already produced those documents or agrees that they should be produced under 29 C.F.R. § 2560.503-1(m)(8)(iv). (Def.'s Opposition at 18.) If the parties are unable to reach accord on this issue, they can request a further conference with the Court.

As to Ramsdell's other discovery requests, the governing standard for discovery under First Circuit precedent requires that "some very good reason" must exist to justify discovery. Liston, 330 F.3d at 23. A plaintiff in an ERISA benefits case must allege more than the mere existence of a structural conflict of interest, even in the aftermath of Metropolitan Life Insurance Company v. Glenn, 554 U.S. 105 (2008), the case acknowledging that the existence of a

structural conflict of interest was one factor that a reviewing court should consider. See McGahey v. Harvard Univ. Flexible Benefits Plan, No. 08-10435-RGS, 2009 WL 799464, *2 (D. Mass. March 25, 2009) (“A court should permit discovery only where a plaintiff makes a threshold showing that the denial of benefits was improperly influenced by the administrator’s conflict of interest”); DuBois v. Unum Life Ins. Co. of Am., No. Civ. 08-163-P-S, 2008 WL 2783283, *1-2 (D. Me. July 14, 2008) (“Glenn was not a case about discovery and does not suggest that discovery automatically should be permitted if a [structural conflict] exists” absent “case-specific circumstances demonstrating a possibility of bias in the denial of [the] claim.”); Christie v. MBNA Group Long Term Disability Plan, No. 1:08-cv-44-JAW, 2008 WL 4427192 (D. Me. Sept. 25, 2008) (same).

My earlier conclusions regarding the absence of any significant prejudicial procedural irregularity in processing this claim leads inexorably to the conclusion that Ramsdell has not presented “some very good reason” why this discovery should be allowed. Ramsdell has not shown how guidelines, policies, and procedures about behavioral health issues, in a generalized fashion, or about resolving disputes between treatment providers and medical providers, more specifically, would be relevant to the core issues in this appeal. As for her claim that she is entitled to discovery regarding Dr. Mendelsohn’s financial relationship with Aetna, this is not a case where Aetna sought the services of an outside examiner in order to rely solely upon that opinion to deny benefits. Its own internal review led to a denial, and the fact that it sent the file for medical review to an outside examiner during its appeal process does not dramatically change the nature of the evidence relied upon by Aetna in making its benefits determination.

CONCLUSION

Based upon the foregoing, I now deny the requests pending before the Court.

CERTIFICATE

Any objections to this Order shall be filed in accordance with Federal Rule of Civil Procedure 72.

So Ordered.
April 23, 2012

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge